

REMARKS

The Office has required restriction in the present application as follows:

Group I: Claims 1-12 drawn to an aqueous dispersion;

Group II: Claims 13-16 drawn to a process for the production of an aqueous dispersion;

Group III: Claims 17 and 18 drawn to a powder product; and

Group IV: Claims 19-29 drawn to a process of preparing a product using said aqueous dispersion.

Applicants elect, with traverse, Group I, Claims 1-12 drawn to an aqueous dispersion.

The Examiner has indicated that inventions II and I are related as process of making and product made and that Applicants' product may be made by a process wherein the silicon dioxide powder and cation providing compound are added to a mass of crushed ice which is mixed to induce blending and provide an aqueous product. Inventions I and III are related as combination and subcombination and in the instant case the combination does not exclude other compounds from being present in the composition and the subcombination has utility as a powder format that is less expensive to ship than the aqueous version. Inventions III and II are related as process of making and product made and in the instant case the product may be paired wherein water is not employed and the dry ingredients are simply mixed together. Finally, Groups I/III and IV are related as product and process of use and in the instant case the product may be used in the preparation of an adhesive or water absorbing resin.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups or shown that a burden exists in searching all of the claims.

While the Examiner has indicated that the product of Group I can be made by a different process he has provided no references to support this conclusion. The Examiner's allegation is simply a suggestion pulled out of his hat without any evidence to back up this claim. The restriction between invention Groups I and II is therefore considered improper and should be withdrawn. With respect to inventions I and III as being related as combination and subcombination, while it is true that the combination may not exclude other compounds from being present in the composition, the combination of Group I still requires the subcombination of Group III. Therefore, the Examiner has not shown a two-way distinctness between these two groups which is required for this restriction. With respect to inventions III and II, as process of making and product made, Applicants respectfully point out that Applicants are not making a powder but are preparing an aqueous dispersion using this powder product. Hence the Examiner's reasoning is flawed in making the restriction between these two Groups. With respect to inventions I/III and IV, as related product and process of use, again the Examiner has only indicated that the product may be used in a different preparation and has again provided no references to support this conclusion. Therefore, the restriction between these two groups is considered improper and should be withdrawn.

Moreover, the M.P.E.P. in § 803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits even though it includes claims to distinct and independent inventions.

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office.

Applicants further respectfully request that should the elected product claims of Group I be found allowable, that the Examiner withdraw the Restriction Requirement at least with respect to the process of Group II and rejoin the product and process claims in

accordance with the rejoinder procedures of M.P.E.P. § 821.04(a). Applicants point out in this regard that the product limitations of Group I are recited in the process of Group II.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and early notice of such action is earnestly solicited.


Respectfully submitted,

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